

# Calendar No. 264

117TH CONGRESS  
2D SESSION

# H. R. 4445

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, FEBRUARY 3), 2022

Received; read twice and placed on the calendar

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## AN ACT

To amend title 9 of the United States Code with respect to arbitration of disputes involving sexual assault and sexual harassment.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

**3 SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Ending Forced Arbi-  
5 tration of Sexual Assault and Sexual Harassment Act of  
6 2021”.

**1 SEC. 2. PREDISPENSE ARBITRATION OF DISPUTES INVOLV-**

**2 ING SEXUAL ASSAULT AND SEXUAL HARASS-**

**3 MENT.**

4 (a) IN GENERAL.—Title 9 of the United States Code  
5 is amended by adding at the end the following:

**6 "CHAPTER 4—ARBITRATION OF DISPUTES  
7 INVOLVING SEXUAL ASSAULT AND  
8 SEXUAL HARASSMENT**

“Sec.  
“401. Definitions.  
“402. No validity or enforceability.

9 “§ 401. Definitions

10 “In this chapter:

11           “(1) PREDISPUTE ARBITRATION AGREEMENT.—  
12       The term ‘predispute arbitration agreement’ means  
13       any agreement to arbitrate a dispute that had not  
14       yet arisen at the time of the making of the agree-  
15       ment.

16                 “(2) PREDISPUTE JOINT-ACTION WAIVER.—The  
17                 term ‘predispute joint-action waiver’ means an  
18                 agreement, whether or not part of a predispute arbitra-  
19                 tion agreement, that would prohibit, or waive the  
20                 right of, one of the parties to the agreement to par-  
21                 ticipate in a joint, class, or collective action in a ju-  
22                 dicial, arbitral, administrative, or other forum, con-  
23                 cerning a dispute that has not yet arisen at the time  
24                 of the making of the agreement.

1                 “(3) SEXUAL ASSAULT DISPUTE.—The term  
2                 ‘sexual assault dispute’ means a dispute involving a  
3                 nonconsensual sexual act or sexual contact, as such  
4                 terms are defined in section 2246 of title 18 or simi-  
5                 lar applicable Tribal or State law, including when  
6                 the victim lacks capacity to consent.

7                 “(4) SEXUAL HARASSMENT DISPUTE.—The  
8                 term ‘sexual harassment dispute’ means a dispute  
9                 relating to conduct that is alleged to constitute sex-  
10                 ual harassment under applicable Federal, Tribal, or  
11                 State law.

12 **“§ 402. No validity or enforceability”**

13                 “(a) IN GENERAL.—Notwithstanding any other pro-  
14                 vision of this title, at the election of the person alleging  
15                 conduct constituting a sexual harassment dispute or sex-  
16                 ual assault dispute, or the named representative of a class  
17                 or in a collective action alleging such conduct, no  
18                 predispute arbitration agreement or predispute joint-ac-  
19                 tion waiver shall be valid or enforceable with respect to  
20                 a case which is filed under Federal, Tribal, or State law  
21                 and relates to the sexual assault dispute or the sexual har-  
22                 assment dispute.

23                 “(b) DETERMINATION OF APPLICABILITY.—An issue  
24                 as to whether this chapter applies with respect to a dispute  
25                 shall be determined under Federal law. The applicability

1 of this chapter to an agreement to arbitrate and the valid-  
2 ity and enforceability of an agreement to which this chap-  
3 ter applies shall be determined by a court, rather than  
4 an arbitrator, irrespective of whether the party resisting  
5 arbitration challenges the arbitration agreement specifi-  
6 cally or in conjunction with other terms of the contract  
7 containing such agreement, and irrespective of whether  
8 the agreement purports to delegate such determinations  
9 to an arbitrator.”.

10 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

11 (1) IN GENERAL.—Title 9 of the United States  
12 Code is amended—

13 (A) in section 2, by inserting “or as other-  
14 wise provided in chapter 4” before the period at  
15 the end;

16 (B) in section 208—

17 (i) in the section heading, by striking  
18 **“Chapter 1; residual application”**  
19 and inserting **“Application”**; and

20 (ii) by adding at the end the fol-  
21 lowing: “This chapter applies to the extent  
22 that this chapter is not in conflict with  
23 chapter 4.”; and

24 (C) in section 307—

1 (i) in the section heading, by striking  
2 “**Chapter 1; residual application**”  
3 and inserting “**Application**”; and

8 (2) TABLE OF SECTIONS.—

“208. Application.”.

“307. Application.”

(3) TABLE OF CHAPTERS.—The table of chapters for title 9, United States Code, is amended by adding at the end the following:

#### **“4. Arbitration of disputes involving sexual assault and sexual harassment .....**

## **1 SEC. 3. APPLICABILITY.**

2 This Act, and the amendments made by this Act,  
3 shall apply with respect to any dispute or claim that arises  
4 or accrues on or after the date of enactment of this Act.

Passed the House of Representatives February 7,  
2022.

Attest: **CHERYL L. JOHNSON,**  
*Clerk.*

By KEVIN McCUMBER,

*Deputy Clerk.*



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